

WEDNESDAY, AUGUST 15, 2001

The Board met at the San Diego County Administration Building at 1600 Pacific Highway, Room 310, San Diego, at 9:30 a.m. with Chairman Parrish, Vice Chairman Chiang, Mr. Klehs and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

BUSINESS TAXES APPEALS HEARINGS

Glen M. Passaretti, SR EAA 24-918908; 89000491040
1-1-90 to 6-30-93, \$00.00 Tax, \$5,641.18 Penalty, Negligence
For Petitioner: No Appearance
For Sales and Use Tax Department: Sharon Jarvis, Counsel
Action: The Board took no action.

Abbott Iskandar Shallal & Bahija H. Shallal, SR FH 25-880893; 37281
4-1-96 to 6-30-98, \$24,969.67 Tax, \$2,336.51 Penalty, Negligence
For Petitioner: Martin Schwartz, Representative
Abbott Shallal
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.
Issues: Whether audited taxable sales were established in accordance with the facts.
Whether relief from the negligence penalty is warranted.
Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs and Ms. Mandel voting no, the Board ordered that the negligence penalty be deleted; otherwise the petition be redetermined as recommended by the Appeals Section.

SPECIAL PRESENTATIONS

On behalf of the Board Members, Mr. Parrish, presented to Robert Haeussler, Business Tax Administrator II, Laguna Hills Branch Office, Santa Ana District, a retirement resolution extending its sincere and grateful appreciation for his dedicated service to Board of Equalization and the State of California.

Mr. Andal expressed his appreciation for Mr. Haeussler's hard work and wished him the best in his future retirement.

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On behalf of the Board Members, Mr. Parrish, presented to Robert Liley, Business Tax Administrator I, Rancho Mirage Branch Office, Riverside District, a retirement resolution extending its sincere and grateful appreciation for his dedicated service to Board of Equalization and the State of California.

Mr. Chiang expressed his appreciation for Mr. Liley's meritorious service to the Board of Equalization.

FRANCHISE AND INCOME TAX MATTERS, ADJUDICATORY, HEARD ON AUGUST 14, 2001

Yamaha Motor Corporation, USA, 99A-0226; 89002467500

1989, \$ 3,593.00 Assessment

1990, \$229,623.00 Assessment

1991, \$ 9,038.00 Assessment

Submitted for Decision: August 1, 2001

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel abstaining, the Board ordered that the petition for rehearing be granted.

Pentel of America Ltd., 99A-0014; 89002464880

1989, \$177,126.00 Assessment

Submitted for Decision: August 1, 2001

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel abstaining, the Board ordered that the petition for rehearing be granted.

FINAL ACTION ON APPEAL HEARD ON AUGUST 14, 2001

Mr. Andal moved to grant the petition of *Geronimo, Inc.*, 47665. Mr. Parrish seconded the motion but the motion failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish and Mr. Andal voting no, the Board ordered that the appeal of *Geronimo, Inc.*, 47665, be denied.

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BUSINESS TAXES APPEALS HEARINGS

Michael Lee Sparkman & Daniel Robert Cornwell, SR FH 97-066030; 37201

1-6-97 to 12-31-98, \$9,862.73 Tax

For Petitioner: Dan Cornwell, Owner

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner's allegation that a certain sale is exempt from tax because it delivered the vessel to the purchaser outside the territorial waters of California warrants relief from the tax.

Whether petitioner is entitled to relief from interest for the first 12-month period after the date of each sale on tax collected as a broker from its purchasers.

Action: Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

FARD, Inc., SX FH 99-424199; 89002247440

4-1-94 to 3-31-97, \$6,621.45 Tax

For Petitioner: Martin Schwartz, Representative

Amir Rastegarpour, President

For Sales and Use Tax Department: Jeffery Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether sufficient evidence was provided to show that certain disallowed claimed sales are nontaxable sales for resale or exempt sales in interstate or foreign commerce.

Whether sufficient evidence was provided to show that the measure of tax for unreported taxable documentary fees, unreported taxable smog fees, and compilation errors in preparing returns is excessive.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Summit Imports, Inc., SR FH 99-567595; 89002311430

10-1-94 to 9-30-97, \$5,000.11 Tax, \$427.35 Penalty, Finality

For Petitioner: Kasra Razavi, President

For Sales and Use Tax Department: Warren Astleford, Counsel

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Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether sufficient evidence was provided to show that certain sales of vehicles qualify as exempt sales in foreign commerce.

Whether relief from the 10 percent penalty for failure to timely pay the determination (finality penalty) is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Action Medical Products, Inc., SR FH 97-309543; 57424

5-10-91 to 12-31-98, \$67,101.02 Tax, \$00.00 Penalty

For Petitioner: Jackie Reynolds, President

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the Board properly mailed the Notice of Determination to taxpayer.

Whether all or any portion of the determination is barred by the applicable statute of limitations.

Whether taxpayer's continuous passive motion machines (CPMM's) qualify as exempt medicines, such that taxpayer's leases thereof are nontaxable.

Whether taxpayer relied on (allegedly) erroneous advice from the Board's staff thereby warranting relief from the tax.

Whether the taxpayer has established that the determination erroneously assesses tax upon nontaxable services that are not part of the sale of tangible personal property, nontaxable sales for resale, and/or exempt sales to the United States Government via Medicare Part A.

Whether relief from the penalties for negligence, failure to file returns and failure to timely pay the determination (finality penalty) is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision; granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 Day thereafter to bring the matter back to the Board with a final decision.

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Craftsmen Steel Buildings, SR FH 99-855494; 89002418000
5-1-76 to 6-30-87, \$239,254.00 Tax

For Petitioner:

Steven Houston, President
Randy Houston, Vice President
Peter M. Polishuk, Attorney

For Sales and Use Tax Department:

David H. Levine, Counsel

Action: The Board took no action.

FINAL ACTION ON PETITIONS HEARD AUGUST 15, 2001

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Summit Imports, Inc.*, SR FH 99-567595; 89002311430, be submitted for decision.

The Board convened at 11:30 p.m. and reconvened at 11:40 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel present.

FINAL ACTION ON PETITIONS HEARD AUGUST 15, 2001

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Michael Lee Sparkman & Daniel Robert Cornwell*, SR FH 97-066030; 37201, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *FARD, Inc.*, SX FH 99-424199; 89002247440, be redetermined as recommended by the Appeals Section.

Mr. Klehs moved to redetermine the petition of *Summit Imports, Inc.*, SR FH 99-567595; 89002311430. No vote was taken.

Mr. Parrish offered a substitute motion to delete the penalty and submit the reminder of the petition for decision; granting the petitioner 30 days to provide additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation. The motion was seconded by Mr. Chiang, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent.

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The Board adjourned at 11:45 a.m.

The foregoing minutes are adopted by the Board on October 25, 2001.